



Republic v Land Registrar Kilifi County & another; Chief Magistrate's Court Malindi & 4 others (Interested Parties); Matali (Exparte Applicant) (Environment and Land Judicial Review Miscellaneous Application E007 of 2024) [2025] KEELC 3779 (KLR) (29 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3779 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION E007 OF 2024**

FM NJOROGE, J

APRIL 29, 2025

BETWEEN

REPUBLIC APPLICANT

AND

LAND REGISTRAR KILIFI COUNTY 1ST RESPONDENT

HON ATTORNEY GENERAL 2ND RESPONDENT

AND

THE CHIEF MAGISTRATE'S COURT MALINDI INTERESTED PARTY

JAMES MAKINI INTERESTED PARTY

SAMUEL KOLANI KARANI INTERESTED PARTY

KAZUNGU NZAI INTERESTED PARTY

JULIUS CHANGAWA HARE INTERESTED PARTY

AND

JACKLINE KALEKYA MATALI EXPARTE APPLICANT

JUDGMENT

The Motion

1. The Judicial Review application before me is dated 4th June 2024. The application is seeking the following orders:



- a. An order of prohibition be granted against the Land Registrar Kilifi County from implementing the decree issued on 21st February 2004 by Chief Magistrates Court at Malindi in ELC Number E34 of 2022 Julius Changawa Hare Versus James Makini and 2 Others;
 - b. An order of certiorari be issued to squash the decree issued on 21st February 2024 by Chief Magistrate Court at Malindi in ELC E34 of 2022 Julius Changawa Hare Versus James Makini and 2 Others.
2. The application is supported by the Statement of Facts and the Verifying Affidavit sworn by Jacqueline Kalekye Mateli the ex parte applicant. The grounds upon which the application is made are in the statement of facts. Briefly, they are that the ex parte applicant was not a Party in ELC E34 of 2022 Julius Changawa Hare Versus James Makini and 2 Others yet the 1st Interested Party has already issued a decree and directed that the ex-parte applicant's title be canceled and the property be reverted to the original number. It is stated that the ex parte applicant shall be subjected to irreparable loss and damage due to the ignorance of the 2nd 3rd and 4th Interested Parties which can be seen in their failure to lodge a caution or register a restriction against to the mother title if they had any genuine claim against the 5th Interested Party from whom the expert applicant purchased the piece of land. Originally the mother parcel was referred to as Parcel No 533 but it was subdivided into 3 portions 2251 2252 and 2253 of which the ex parte applicant purchased Plot No 2252. The ex parte applicant maintains that all the laid down conveyancing protocols were followed to the letter before the parcel of land 2252 was registered in his name. All this was possible because the 2nd 3rd and 4th Interested Parties never lodged a caution and/or registered a caveat against Title Number 533. Now those same Interested Parties are in the process of executing their decree and unless the 1st respondent the Land Registrar is prohibited the declaration will be implemented and the expert applicant shall be greatly prejudiced.
 3. It is good to state from the beginning that the application is brought under Sections 8 and 9 of the [Law Reform Act](#) Cap 26 of the Laws of Kenya and Order 53 Rule 1 and 2 of the Civil Procedure Rules.

Responses

4. The 3rd Interested Party Samuel Kolani Karani filed a replying affidavit dated 2nd December 2024. In that affidavit it is stated that he was the defendant in the Malindi Magistrate Case Number E15 Of 2021, and that the purported agreement between the ex parte applicant and Julius Changawa was executed while the dispute over Title Number 533 was spending in court; that the advocate for the parties in the sale agreement for the ex parte applicant is Michira Messa, and company advocates which is the same law firm that filed CMC ELC Number 15 Of 2021 against him, hence the ex parte applicant cannot claim to be an innocent purchaser for value.
5. It is averred that the decree dated 15th February 2023 has not been appealed against all set aside on review and is therefore final.
6. That decree, he states, awarded him 6 acres to be carved out of the Title Number 533 and compels Julius Changawa Hare transfer the 6-acre portion to him and in default the Executive Officer of the court to sign all the necessary documents to effect the transfer thereof to him.
7. He deposed upon advice of his advocate that the decree dated 15th February 2023 in his favor cannot be challenged or contested by way of judicial review proceedings and the present proceedings are bad in law and an abuse of the process of the court. He avers that the issues raised in the judicial review application could have been ventilated in Chief Magistrates ELC No 15 Of 2021; that lawful execution of the decree cannot be a challenged in another suit since it is the court seized of the matter which has



the power to set aside or vacate its own decision and consequential proceedings. He avers that a lawful decision of a court cannot be squashed by means of judicial review proceedings

8. The 2nd Interested Party filed an affidavit dated 2nd December 2024 reiterating the same matters that are in the 3rd Interested Party's replying affidavit.
9. The ex parte applicant filed a supplementary affidavit dated 5th December 2024 stating that the suit was instituted in the year 2023 while the sale agreement between her and the 5th Interested Party was executed on 21st September 2021; that the transfer and issuance of title was also effected in the year 2022 prior to the filing of the suit.

Analysis and determination

10. I stated at the beginning that the application is brought under Sections 8 and 9 of the [Law Reform Act](#) Cap 26 of the Laws of Kenya and Order 53 Rule 1 and 2 of the Civil Procedure Rules. By the invocation of these provisions, the court is enjoined to scour the application before it for any of the traditional grounds for issuance of prerogative remedies. The traditional scope of judicial review remedies was scope of judicial review reliefs beyond the traditional three – mandamus, prohibition and certiorari. The traditional grounds on which the traditional remedied could be based were: illegality, irrationality, procedural impropriety; ultra vires, abuse of discretion, failure to have material considerations in mind and failure to observe rules of natural justice.
11. In the case of *Pastoli v Kabale District Local Government Council and Others* [2008] 2 EA 300 it was held as follows:

“In order to succeed in an application for judicial review, the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety ...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.....Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

12. It is the case that grounds relied on must be set out in the statement of facts and nowhere else. In *Commissioner General, Kenya Revenue Authority vs. Silvano Onema Owaki t/a Marenga Filling Station.*, C.A.45/2001 (Kisumu), the Court of Appeal said as follows:

“We would observe that it is the Verifying Affidavit not the Statement to be verified, which is of evidential value in an Application for Judicial Review. That appears to be the meaning of rule 1(2) of Order LIII.”



13. The court in Commissioner General, Kenya Revenue Authority (supra) also stated as follows:

“The facts relied on should be stated in the Affidavit (see Republic –vswandsworth JJ ex-parte Read (1942) 1 KR 281. The statement should contain nothing more than the name and the description of the Applicant, the relief sought and the grounds on which it is sought.”

14. The grounds in the statutory statement are set out as grounds A to W. In my view it is not for an applicant to give lengthy narratives when setting out the traditional Judicial Review grounds which as seen above should be just a few. An applicant should not also leave the court to try and interpret which ground they mean to rely on by a foliage of words, or to guess under which ground they have lodged their application. It is only proper if they specifically picked the grounds that suit their facts and set them out expressly without narrative. I do not find any single ground for judicial review in the section covered by the heading “3. Ground (sic) Upon Which The Relief Is Sought”. As the grounds have not been set out, then it becomes impossible for this court to attribute of the facts set out in the statement to any ground for judicial review. In that case the applicant cannot sustain any argument for her case under the traditional judicial review remedies of certiorari, prohibition and mandamus, and the application before me is fatally defective and fit only for dismissal on that premise alone.
15. Essentially, the above discourse should have concluded the ruling but seeing that this matter involves execution of a decree, this court must make one or two comments. Execution of decrees issues under Order 22 of the Civil Procedure Rules. As long as a decree has not been set aside the decree holder is entitled to execute it. It is legal to do so.
16. I agree with the Interested parties when they submit that it is improper for the ex parte applicant to attempt to stay the execution of the decree in their suit by way of an application for judicial review, which in any event this court has found to be exceedingly lacking in merit.
17. The proper forum where to ventilate the ex parte applicant’s grievances arising out of the judgment and decree is the court that passed the decree, where he may apply to have the decree set aside, that is if her application can be found meritorious there.
18. The upshot of the foregoing is that the judicial review application dated 4/6/2024 lacks merit and it is hereby dismissed with costs to the two respondents and the 2nd and 3rd Interested parties only.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 29TH DAY OF APRIL, 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

